

Todd L. Bice, Esq., Bar No. 4534
tlb@pisanellibice.com
Jordan T. Smith, Esq., Bar No. 12097
its@pisanellibice.com
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*Attorneys for Defendant
Kohl's Department Stores, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRBY SPENCER,

Case No. 2:14-cv-01646-RFB-CWH

Plaintiff,

ANSWER

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

Defendant Kohl's Department Stores, Inc. ("Defendant"), hereby answers the Complaint of Plaintiff Kirby Spencer ("Plaintiff"), filed in the United States District Court for the District of Nevada, as follows:

INTRODUCTION

20 1. Paragraph 1 of the Complaint merely states that Plaintiff basis his Complaint on the
21 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”), and no response is
22 required. To the extent that a response is required, Defendant denies that it violated the TCPA or
23 any other law.

JURISDICTION AND VENUE

25 | 2. Paragraph 2 of the Complaint asserts a legal conclusion to which no response is
26 | required.

3. Defendant admits that it conducts business in the State of Nevada. The remainder of the allegations in Paragraph 3 of the Complaint state legal conclusions to which no responses are required.

4. Paragraph 4 of the Complaint asserts legal conclusions to which no responses are required.

5. To the extent the allegations in Paragraph 5 of the Complaint state legal conclusions, they do not require a response and are therefore denied.

PARTIES

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint and, therefore, denies those allegations.

7. To the extent the allegations in Paragraph 7 of the Complaint state legal conclusions they do not require a response and are therefore denied. Defendant denies the remaining allegations in Paragraph 7 of the Complaint.

8. Defendant admits that it conducts business in the State of Nevada. Defendant denies the remainder of the allegations in Paragraph 8 of the Complaint.

9. To the extent the allegations in Paragraph 9 of the Complaint state legal conclusions they do not require a response and are therefore denied. Defendant denies the remaining allegations in Paragraph 9 of the Complaint.

STATEMENT OF FACTS

10. Defendant hereby repeats, realleges and incorporates by reference its responses above to Paragraphs 1 through 9 of the Complaint.

11. Paragraph 11 of the Complaint asserts legal conclusions, to which no responses are required. To the extent that a response is required, Defendant denies the remaining allegations in Paragraph 11 of the Complaint.

12. Paragraph 12 of the Complaint asserts legal conclusions, to which no responses are required. To the extent that a response is required, Defendant denies the remaining allegations in Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint asserts legal conclusions, to which no responses are required. To the extent that a response is required, Defendant denies the remaining allegations in Paragraph 13 of the Complaint.

14. Defendant refers the Court to the letter annexed to the Complaint as Exhibit 2 for the true and correct contents thereof. Defendant states that at the time of the filing of the Complaint, Defendant had not responded to Plaintiff's letter. Defendant denies the remainder of the allegations in Paragraph 14 of the Complaint.

8 15. Defendant denies each and every allegation in Paragraph 15 of the Complaint.

FIRST CLAIM FOR RELIEF

16. Defendant hereby repeats, realleges and incorporates by reference its responses
above to Paragraphs 1 through 15 of the Complaint.

12 17. Paragraph 17 of the Complaint asserts legal conclusions, to which no responses are
13 required. To the extent that a response is required, Defendant respectfully refers this Court to the
14 cited authority for the true and correct contents thereof, and denies Plaintiff's allegations to the
15 extent that they mischaracterize the law.

16 18. Paragraph 18 of the Complaint asserts legal conclusions, to which no responses are
17 required. To the extent that a response is required, Defendant respectfully refers this Court to the
18 cited authority for the true and correct contents thereof, and denies Plaintiff's allegations to the
19 extent that they mischaracterize the law.

19. Defendant denies each and every allegation in Paragraph 19 of the Complaint.

21 20. Paragraph 20 of the Complaint asserts legal conclusions, to which no responses are
22 required. To the extent that a response is required, Defendant respectfully refers this Court to the
23 cited authority for the true and correct contents thereof, and denies Plaintiff's allegations to the
24 extent that they mischaracterize the law.

25 || 21. Defendant denies each and every allegation in Paragraph 21 of the Complaint.

26 | 22. Defendant denies each and every allegation in Paragraph 22 of the Complaint.

PRAAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief that he seeks in the “WHEREFORE” paragraph of the Complaint. Defendant denies that Plaintiff is entitled to a jury trial. To the extent not otherwise addressed by this Answer, Defendant denies the allegations in the Complaint, including those contained in the headings and subheadings.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

(Failure to State a Claim)

9 The Complaint, and each purported claim for relief therein, fails to state facts sufficient to
0 constitute a claim for relief against Defendant.

SECOND DEFENSE

(Consent)

13 The Complaint, and each purported claim for relief therein, is barred because Plaintiff
14 consented to and approved all the acts and omissions about which Plaintiff now complains.

THIRD DEFENSE

(Waiver)

17 The Complaint, and each purported claim for relief therein, is barred, in whole or part, by
18 the doctrine of waiver.

FOURTH DEFENSE

(Estoppel)

Plaintiff's claims against Defendant are barred, in whole or in part, by the doctrine of estoppel.

FIFTH DEFENSE

(Statute of Limitations)

Plaintiff's claims against Defendant are barred, in whole or in part, by the applicable statute of limitations for each claim.

SIXTH DEFENSE

(Laches)

The Complaint, and each purported claim for relief therein, is barred, in whole or part, by the doctrine of laches.

SEVENTH DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, under the TCPA's safe harbor or any other applicable safe harbor.

EIGHTH DEFENSE

(Other Defenses)

10 Due to lack of information as to matters set forth in the Complaint and each purported claim
11 for relief therein, Defendant has insufficient knowledge or information on which to form a belief as
12 to whether Defendant has additional, as yet unstated, affirmative or other defenses available, and
13 Defendant therefore reserves the right to assert additional affirmative defenses in the event that
14 discovery indicates said defenses are proper.

DATED this 17th day of November, 2014

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith

Todd L. Bice, Esq., #4534
Jordan T. Smith, Esq., #12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Defendant Kohl's Department Stores, Inc.